

## APPENDIX A

APPENDIX TO AN ORDER OF THE  
KENTUCKY PUBLIC SERVICE COMMISSION

IN CASE NO. 2001-00206

DATED April 1, 2002.

## SETTLEMENT AGREEMENT AND RELEASE

**THIS SETTLEMENT AGREEMENT AND RELEASE** ("Agreement") is made by and between Inter-Mountain Cable, Inc., d/b/a MTS Communications ("MTS Communications"), a Kentucky corporation, and BellSouth Telecommunications, Inc. ("BellSouth"), a Georgia corporation, both of whom are parties to an action before the Kentucky Public Service Commission (the "Commission"), Case No. 2001-206.

### RECITALS:

1. MTS Communications is the complainant and BellSouth is the defendant in an action before the Commission, styled and numbered *In the Matter of Inter-Mountain Cable, Inc., d/b/a MTS Communications v. BellSouth Telecommunications, Inc.*, Case No. 2001-206.

2. The claim in dispute in Case No. 2001-206 concerns allegations that BellSouth has attempted to "win back" an MTS Communications customer by contacting the customer prior to order completion and informing him that he had been slammed.

3. The parties to this Agreement desire to settle, compromise, and forever release and discharge the claims that have been made in Case No. 2001-206.

4. The parties have each been represented in the negotiation and preparation of this Agreement by counsel. The fact that one or the other party, or its attorney, chose to draft all or any particular language used in this Agreement shall not be used to construe that part of the Agreement unfavorably against that party.

5. The parties affirmatively acknowledge, represent, warrant, and recite that:

- A. They have been represented independently in the negotiation, drafting, and signing of this Agreement by counsel of their own choosing;
- B. No representations, covenants, or warranties have been made in connection with this Agreement other than as specifically set forth in this document;
- C. The signing of this Agreement is done freely and voluntarily after receiving the advice of independent counsel, and not as the result of any fraud, undue influence, coercion, or duress of any kind; and
- D. The parties have carefully read each provision of this Agreement and understand the Agreement.

### AGREEMENT:

**THEREFORE**, in consideration of the mutual covenants made herein, the adequacy of which is hereby acknowledged, the parties agree as follows:

1. Releases: Except where necessary to fulfill a contractual, regulatory, or legal requirement, BellSouth retail employees shall not use wholesale information.

2. Dismissal of the Action: The parties agree that concurrently with the execution of this Agreement they shall cause to be executed and tendered to the Commission an Agreed Order of Dismissal, with prejudice. The Agreed Order of dismissal shall dismiss with prejudice the claim brought by MTS Communications against BellSouth.

3. No Admission of Liability: The parties acknowledge that the terms of this Agreement constitute the compromise of a disputed claim and that the execution and performance of this Agreement are not admissions of liability by any party for any matter or precedent upon which liability may be assessed.

4. Severability: If any provisions of this Agreement or its application to any circumstances are held invalid, the validity of that provision in any other circumstance and the validity of the remaining provisions of this Agreement shall not be affected.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

5. Entire Agreement: This Agreement constitutes the entire agreement between the parties regarding its subject matter. It supersedes any alleged prior agreements, correspondence, arrangements and understandings between the parties. No representation, promise, inducement or statement of intent by or on behalf of any party has been made, if not embodied in this Agreement. The terms of this Agreement may not be waived, modified or supplemented except in writing signed by all parties hereto.

BELLSOUTH TELECOMMUNICATIONS, INC.

By:

Dorothy J. Chambers

Its:

Attorney

Date:

March 13, 2002

STATE OF Kentucky )  
 )SS  
COUNTY OF Jefferson )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me by  
Dorothy J. Chambers this 13<sup>th</sup> day of March, 2002.

Notary Public, State at Large, KY

My commission expires: My commission expires Jan. 4, 2003

Robert A. Smith  
NOTARY PUBLIC

and

INTER-MOUNTAIN CABLE, INC.. D/B/A  
MTS COMMUNICATIONS

By:

[Signature]

Its:

Attorney

Date:

March 13, 2002

COMMONWEALTH OF KENTUCKY

)SS

COUNTY OF JEFFERSON

SUBSCRIBED, SWORN TO, AND ACKNOWLEDGED before me by  
Edward A. L. Dugg this 13<sup>th</sup> day of March, 2002.

My commission expires: Jan. 20, 2006

Marlene Light  
NOTARY PUBLIC



BellSouth Telecommunications, Inc.  
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Room 407  
Louisville, KY 40203

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Senior State Operations Counsel

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March 13, 2002

Edward T. Depp, Esq.  
Dinsmore & Shohl, LLP  
2000 Meidinger Tower  
462 S. 4th Avenue  
Louisville, KY 40202

Re: Inter Mountain Cable, Inc. d/b/a MTS Communications,  
Complainant v. BellSouth Telecommunications, Inc., Defendant  
PSC 2001-206

Dear Tip:

Attached is the settlement agreement I transmitted to you with my letter of March 5, 2002. I now have authorization to execute that agreement on behalf of BellSouth. This letter also confirms that it is against BellSouth's policy for BellSouth employees to use wholesale information in order to offer or promote BellSouth products or service to any actual or potential end user or retail customer. BellSouth agrees that it will reaffirm to its retail employees BellSouth's policy on the use of wholesale information.

If this satisfactorily resolves this matter, I would appreciate your executing the enclosed agreement so we can then file it with the Public Service Commission as a complete resolution of this matter.

I appreciate your cooperation and assistance in bringing this matter to a prompt resolution.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Dorothy J. Chambers", written over a horizontal line.

Dorothy J. Chambers

Enclosure

cc: Mr. Dale Wright, Public Service Commission, Division of General Counsel